

David H. Bernstein (dhbernstein@debevoise.com)
Megan K. Bannigan (mkbannigan@debevoise.com)
Marissa MacAneney (mpmacaneney@debevoise.com)
Timothy Cuffman (tcuffman@debevoise.com)
DEBEVOISE & PLIMPTON LLP
919 Third Avenue
New York, New York 10022
Telephone: (212) 909-6696
Fax: (212) 521-7696

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----	X	
--	:	
VANS, INC. and VF OUTDOOR, LLC	:	
	:	
Plaintiffs,	:	
	:	
-against-	:	22-cv-02156-WFK-RML
	:	
MSCHF PRODUCT STUDIOS, INC.,	:	
	:	
Defendant	:	
-----	X	

DECLARATION OF KEVIN WIESNER

I, Kevin Wiesner, declare as follows:

1. I am the co-Chief Creative Officer of MSCHF Product Studio, Inc. (“MSCHF”). Among other responsibilities, I work with teams of designers, engineers, creatives, and supply chain experts to design and create MSCHF’s footwear products. I am also responsible for overseeing the creation of the messages and manifestos that accompany MSCHF’s products. In this role, I was closely involved in the creation and design of the upcoming *Wavy Baby* project. I am knowledgeable as to the conception, design, construction and messages of *Wavy Baby*, as well as their similarities and dissimilarities to the Vans Old Skool sneakers.

2. I make this declaration based on my personal knowledge, in opposition to the Motion for a Temporary Restraining Order and Preliminary Injunction filed by Vans, Inc. and VF Outdoor, LLC (together, “Vans”) against MSCHF.

Background

3. For my undergraduate education, I was selected for the Brown University/Rhode Island School of Design Dual Degree Program, a highly selective program that only admits about fifteen students per year. As a result of my participation in this five-year program, I earned a bachelor’s degree from Brown University in materials engineering and a bachelor’s degree in industrial design from Rhode Island School of Design (“RISD”).

4. While in art school at RISD, I met Lukas Bentel. Lukas and I have worked together for more than 10 years. We’ve made sculptures and furniture, and created installation artworks. Throughout all of those practices, it became increasingly clear that art made to exist within what we think of as “the art world” is incredibly constraining. The audience is limited, and the vernacular of the space is impenetrable to the casual observer. This presents a problem for any artwork that is intended as critique or to prompt conversation. If your work has a message behind it, it becomes obviated if no one hears it.

5. In reaction to this, and after being selected in 2015 as an artist in residence for the New Museum of Contemporary Art in New York City, Lukas and I (through the creation of Hello Velocity, along with a third partner) consciously decided to experiment with making artworks that would reach the largest audience we could. With that conceptual framework—that audience was a core piece of the art itself, not something

applied afterwards to “distribute” the art—we deliberately chose a new artistic medium for its functional merits.

6. The medium (i.e., working format) we arrived at was that of a startup, an internet business. We made a series of three pieces in the course of this exploration, which became our collective thesis project: Bitelabs, The McMass Project, and Genecoin. All three of these were fictional business entities (respectively, a Biotech startup, a crowdfunding campaign, and a blockchain startup) that satirically approached themes of consumerism, celebrity obsession, and financialization. If you were to Google any of these projects, they would be the first result—we successfully generated international coverage and discussion for all of these works.

7. In 2019 Lukas and I joined MSCHF, where I have spent the last three years as the co-Chief Creative Officer.

8. These themes and working philosophy have carried through to the work that Lukas and I now do with MSCHF. Conceptually, our artist practice has a consistent throughline from that point to now.

Readymades and Cultural Readymades

9. Lukas and I, as the creative leads of MSCHF, often use the term “cultural readymade” when speaking about the work we do. We arrived at this term from considering our working methodology in light of the general art world term of “readymade,” as coined by Marcel Duchamp.

10. Duchamp’s most famous readymades are a porcelain urinal placed on a gallery pedestal, and a bicycle wheel mounted vertically atop a wooden stool.

Readymades (per Duchamp) are manufactured, commercial pre-existing objects that

become artworks by virtue of the artist's selection. Readymades exemplify "conceptual art," insofar as the artwork becomes entirely about the idea of the piece, and not the artist's labor to produce something visually pleasing.

11. There is at least one other existing use of the term "readymade": internationally renowned Chinese artist Ai Weiwei describes some of his works as "cultural readymades."

12. Ai Weiwei has applied the term "cultural readymade" to several of his artworks, one of which is a series of photographs showing the artist dropping and smashing a Han Dynasty urn, appropriately titled "Dropping A Han Dynasty Urn." Ai describes specifically the urn itself as a "cultural readymade." Originally a utilitarian object, the urn has become culturally powerful and sacrosanct by virtue of its historical weight, and all the cultural significance that entails. The urn therefore becomes an incredibly powerful medium for use in the creation of art because the audience/public ascribes such value to it.

13. In other series of works, Ai Weiwei takes these urns and applies, for example, the Coca-Cola logo to further illustrate the breadth of what may be viewed as a cultural readymade.

14. MSCHF's use of the term "cultural readymade" is similar to Ai Weiwei's. In fact, in an homage to Ai Weiwei, MSCHF included a spread showing "*Ai Weiwei Dropping His Phone on His Face*" in MSCHF Magazine Vol. 4, as part of Secret Drop #12. I believe that artistic work can and should choose to use the most potent material available.

15. There is an additional layer for MSCHF, which is that reaching the largest possible audience and permeating pop/mass culture is a core part of MSCHF's conceptual project.

16. Thus, when MSCHF is selecting cultural elements to work with, we are doing so not only to enhance the work itself (be that object, image, experience, or otherwise), but to more effectively communicate.

17. Cultural readymades imbue a work with an entrapoint that makes it easier for people to engage with the work, and for any project engaged in commentary, critique, satire, or parody, this is invaluable.

18. In the same way that medieval illuminators would pursue Lapis Lazuli blue paint, so does MSCHF pursue cultural elements that resonate with mass audiences and help our work reach people not only at scale, but with impact.

MSCHF Sneakers

19. Among various other creative works, MSCHF designs artwork critiquing sneaker culture. We have chosen to focus on sneaker culture because it is a phenomenon that sits at a strange and fascinating nexus of several intertwining sectors, such as fashion (*i.e.*, latest trends), technology (*e.g.*, incorporation into the digital metaverse, NFTs, and social media), economics (*e.g.*, sneakerheads invest in sneakers like stocks, and brands will partner with anyone to garner clout and sales), and consumerism (*i.e.*, obsession with participating in the cycle of acquisition and waste). It is our goal to take this culture as it is, comment on it, critique it, and transform it.

20. MSCHF began designing shoes as part of its broader commentary in 2019. That year, it released the *Jesus Shoes*—white Nike Air Max 97s, modified to incorporate

Christian symbols, including a crucifix on the laces, “holy water” injected into the sole, frankincense sprinkled inside the shoe, and “Matthew 14:25” written on the side. The *Jesus Shoes* were followed by the *Satan Shoes* in 2021, which were designed and released as a companion project to the *Jesus Shoes*. The *Satan Shoes* were 666 individually numbered black Nike Air Max 97s, modified with a pentagram on the laces, human blood injected into the sole, and “Luke 10:18” written on the side. Both shoes came in intricately designed MSCHF boxes, which included elaborate artwork, and the MSCHF name. Together, the shoes critiqued “collab culture” by embodying extreme “collaborations” between Nike and Jesus, on the one hand, and Nike and Satan on the other, mirroring sneaker companies’ willingness to collaborate with anyone and everyone to make money, and, thus, underscoring the absurdity of the collaboration paradigm.

21. In February 2022, we released the *TAP3* (pronounced “Tape”) sneaker. This was the first shoe that MSCHF designed from the ground up. It featured a body that was reminiscent of a legendary sneaker design—wrapped in MSCHF-branded tape to make its source clear to all who would see it. The covering of the shoe, and its specially designed MSCHF box, in MSCHF-branded caution tape was MSCHF’s version of a silhouette that every streetwear brand makes their own, and a comment on MSCHF’s previous litigation with a popular shoe brand.

The Conception of *Wavy Baby*

22. For the next iteration of its sneaker art, MSCHF created and designed a “sneaker” like no one has ever seen before. Called the *MSCHF x Tyga Wavy Baby*, the project launches on Monday, April 18, 2022, and due to its unique features and important message, is already garnering attention.

23. This is a special project for MSCHF because, like the TAP3 shoe, we designed each element of the *Wavy Baby* from scratch, solicited and found a factory willing to manufacture our designs (which wasn't easy given both how unique the mold had to be and the low-volume production run), custom-engineered the molds, and through considerable trial and error developed our own masterpiece that is structurally and aesthetically unique compared to everything else on the market.

24. The *Wavy Baby* concept started with a Vans Old Skool sneaker, which is historically the most iconic, prototypical, functional, cool, niche skate shoe there is. Vans is now an über-trendy, mass-consumed commodity, beloved by consumeristic sneakerheads and the masses alike. No other shoe embodies those dichotomies—niche and mass taste, functional and trendy, utilitarian and frivolous—as perfectly as the Old Skool. MSCHF took this design and the dichotomies and completely warped them, to interrogate consumer desire and the boundaries between physical and digital worlds.

***Wavy Baby* Design Process**

25. As noted above, the design process started with an image of a classic Vans Old Skool skate shoe. We used this shoe as the basis of our art because, as a shoe that is desired by function-minded skaters, consumeristic sneakerheads, and the masses alike, it is fertile ground for investigating consumer desire and the function of consumer symbols in sneakerhead culture.

26. As a starting point, we placed the image of the Old Skool in Photoshop and used a digital filter tool called “liquify” across the image. The “liquify” tool allowed us to move our mouse around to drag different points of the image of the Old Skool and thus warp the shoe into an entirely new image. The “liquification” of the Vans

symbolized the transformation from the once iconic shoe into the modern, wobbly, and unbalanced realities. The resulting image was a “shoe” that had a different profile than anything we had seen before—and it was certainly different from any skate shoe ever designed or developed, including the Old Skools.

27. Once we were satisfied with the image of the profile of the *Wavy Baby*, we set about trying to actually manufacture the design. Given the limited quantities associated with MSCHF Sneakers drops and the *avant garde*, unique piece, it was difficult to find a suitable manufacturer. Eventually, however, we found a factory willing to work with us and customize tooling—the hard work was worth it.

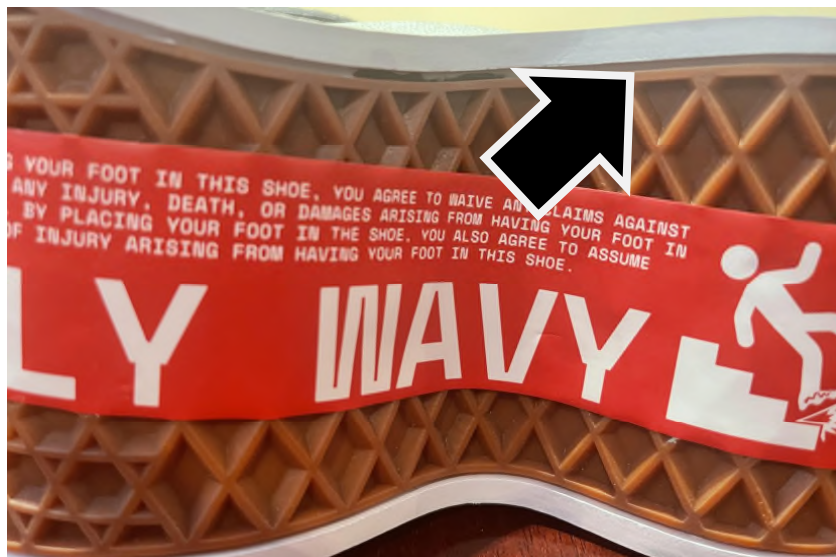
28. The first step was to send a 2D tech pack-set of the *Wavy Baby*’s side, top, front, etc. to manufacturers, who then made CAD based on our pack-set. Thereafter, the manufacturers provided construction samples of the upper part of the work and wood or silicone molds for the sole, along with sample materials. At this stage, we went through several rounds of design and sample materials until we were able to agree on an appropriate process.

29. To create the eye-catching and radically distinct sole, we also had to create an entirely unique “shoe last.” A “shoe last” is the solid, mechanical form used to mold a shoe into the shape of a foot. There are no other shoe lasts on the market in this particular shape. The process took considerable time, effort, and engineering creativity to make happen.

30. Once we selected a factory, it became apparent we could not vulcanize the *Wavy Baby*. Vulcanization is the rubber-bonding process utilized by most skate shoes to mold the sole to the upper of the shoe. The Old Skools, for instance, wrap many layers of

what is called foxing tape around the sole, bake it in an oven, and trim excess off the bottom after. Vulcanization began back in the nineteenth century, but is still used by many shoe companies today.

31. Our factory, however, said vulcanization of the *Wavy Baby* would be impossible if we wanted to achieve our design. So, we utilized an injection molding process to create the sole of the *Wavy Baby*, with no material distinction for the side wall. A notable consequence of this molding is that the *Wavy Baby*, unlike the Vans Old Skool, has what is called a “color dam.” As seen on the bottom of the *Wavy Baby*, there is slight gap in between where the sidewall ends and the sole begins that is not seen on other skate shoes, such as the Old Skools. The color dam stops the flow of rubber during the molding process and provides increased distinction between the colors on the shoe’s sole.



32. The different manufacturing process also creates a very different looking sidewall. The *Wavy Baby* sidewall is far thicker than the sidewall for a Vans Old Skool, which alters the appearance of the work. In the image below, the *Wavy Baby* is on the

left and a Vans Old Skool is on the right. As you can see, the sidewall on the *Wavy Baby* is far thicker.



33. The thickness of the sidewall also affects the look of the work at the uppermost portion. *Wavy Baby* does not have the same three-tiered or grooved appearance as a Vans Old Skool.



34. Once the shoe was molded, and the upper could be attached to the sole, we still had to determine how we would retain the shape of the shoe. Metal plates were placed in the sole, as well as a plastic bridge, to provide support. Standard, functional sneakers, like Vans, do not contain metal plates or plastic bridges.

35. As for the bottom sole of the *Wavy Baby*, we decided on a waffle pattern, as part of our motive to comment on Vans, but changed the bottom sole not only by the wavy shape, but also by placing a huge, red disclaimer:

BY PLACING YOUR FOOT IN THIS SHOE, YOU AGREE TO WAIVE ANY CLAIMS AGAINST MSCHF FOR ANY INJURY, DEATH, OR DAMAGES ARISING FROM HAVING YOUR FOOT IN THIS SHOE, BY PLACING YOUR FOOT IN THIS SHOE, YOU ALSO AGREE TO ASSUME ALL RISKS OF INJURY RESULTING FROM HAVING YOUR FOOT IN THIS SHOE.



36. The sole also varies from the Vans because where *Wavy Baby* soles come into contact with the ground, the sole is wider to maximize contact with the surface.

37. The end result was a silhouette unlike anything else on the marketplace. The manufacturing process produces a high-quality product and while it may look at the very first glance like a functional shoe, it turns function and standard skate shoes on its head.

***Wavy Baby* Box and Logo**

38. The box containing *Wavy Baby* and the *Wavy Baby* logo intentionally parody, but differ from, a Vans box.

39. We created the *Wavy Baby* box to be much larger, which accommodates the larger profile of *Wavy Baby*.

Top View



Side views

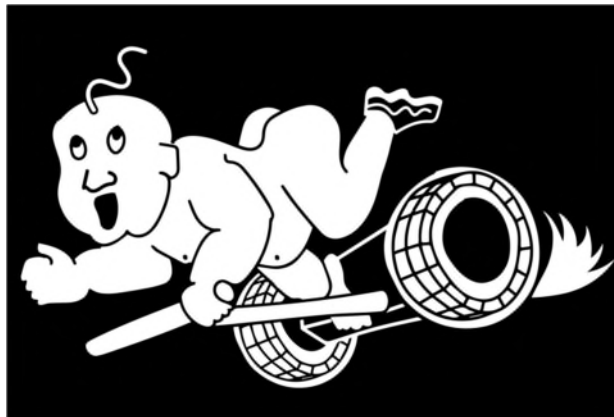


Bottom View



40. Notably, the images shown here compare a size 10 *Wavy Baby* from MSCHF and a size 11 shoe from Vans, so if anything, these images may understate the distinctions.

41. While Vans uses a skateboard, we parodied a photo featuring George W. Bush falling off a Segway. The intent was to draw attention to two of the messages of *Wavy Baby*, that “this is not a skate shoe” and that the *Wavy Baby* itself is meant to challenge our relationship with technology, just like how George W. Bush was challenged when he famously took a tumble while trying a Segway in 2003.

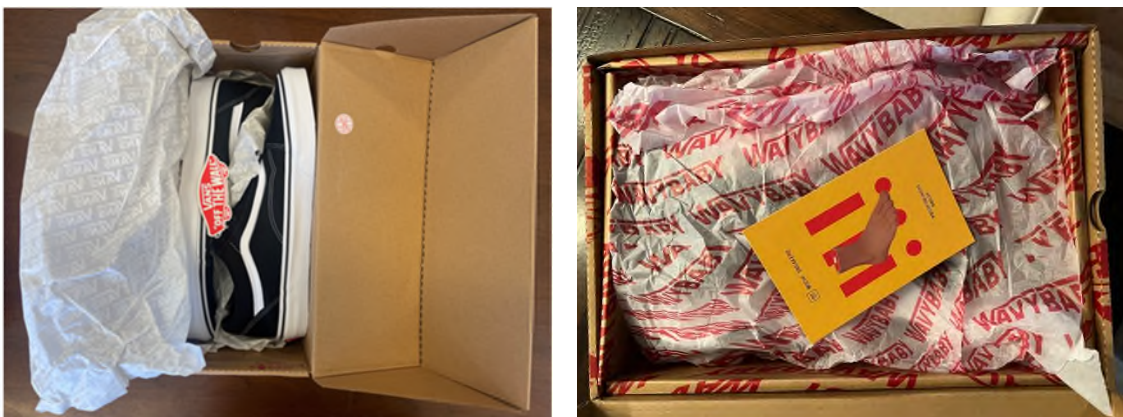


42. The logos appear again as part of the heel tag on the Vans Old Skool and *Wavy Baby* (and note how the two shoes just don't sit the same in the back view given the different shapes).





43. The differences continue once the consumer opens the box.
44. The Vans Old Skool shoes come tucked inside plain cardboard with a red skateboard-shaped tag that reads “Vans ‘Off the Wall.’”



45. The *Wavy Baby* is tucked inside a box printed with the product’s name, WAVYBABY in a bold red color, and it comes with a large yellow card featuring the

classic MSCHF logo of three exclamation points with the same severed foot that appears as the logo for the MSCHF Sneakers app. The text on the card states “MSCHF SNEAKERS” and at the bottom “#MSCHFSNEAKERS #MSCHF.”

46. The tissue paper differs between the products as well. The Vans Old Skool comes wrapped in white tissue paper with the Vans name written in a different shade of white. MSCHF delivers *Wavy Baby* wrapped in tissue paper with the product’s name, “WAVYBABY” presented in a bold red color.

Wavy Baby’s Artistic Purposes

47. The *Wavy Baby* pays homage to the Vans Old Skool as the quintessential skate shoe. Vans’ Old Skool is iconic and stands for function—owing to its combination of durable materials, optimal foot support, and strong grip made possible by the Vans’ flat sole—providing an ideal shoe for skateboarding and a practical shoe for everyday wear. MSCHF’s *Wavy Baby* turns that concept on its head by liquifying the design and eliminating almost all function. For example, the *Wavy Baby* replaces one of the most crucial functional features of the Old Skool—the flat sole, which allows the shoe to grip the ground and the skateboard—with a wavy sole that permits only three points of contact with the ground. While those lucky enough to have a pair of *Wavy Baby* works are technically able to wear them, they cannot be worn as an actual sneaker—*i.e.*, for comfort or convenience or to skateboard (except for the exceptionally and professionally skilled). Instead, those you see wearing *Wavy Baby* are wearing them to send a message, they are trying to get attention, they are wearing them as *art*—and they certainly aren’t walking very far!

48. The *Wavy Baby* is consciously positioned as a high fashion shoe, via both price and difficulty in wearing. That positioning challenges the notion that consumers pay more money for more function, by charging over \$200 for almost no function whatsoever. However, MSCHF's goal in selling *Wavy Baby* is not to make a profit. In fact, we are not making much of a profit at all. *Wavy Baby* participates directly in sneakerhead culture by selling a "sneaker," while taking on the consumer drive to purchase the latest shoe collaboration (of which Vans has done hundreds), regardless of what it is. MSCHF collaborated with Tyga, a sneakerhead who himself has collaborated with several sneaker companies and has, many times, described Vans as one of his favorite traditional sneaker brands. *Wavy Baby* blurs the line between the virtual world (with which consumers are increasingly obsessed, in the form of video games, NFTs, the metaverse, and social media) and physical reality (with which consumers are increasingly bored and wasteful). The *Wavy Baby* is a true work of modern art, a centerpiece for discourse, and the result of many months of innovation and creativity.

49. The *Wavy Baby* project is accompanied by an artistic manifesto, which reads:

WARNING: EXTREMELY WAVY.

A CLASSIC LOW TOP SKATE SHOE WARPED FOR THE WAVY GENERATION. LET'S GET LIQUID, WITH OUR ASSETS, OUR DIETS, AND OUR SHOES. IT'S THE 21ST CENTURY, THE WATER'S RISING, AND THE ONLY SOLUTION IS TO GET WAVY.

WAVY = A GLITCH IN THE SIMULATION, JUST LIKE AN OLD TV TOO CLOSE TO A MAGNET. WAVY BABY SMASHES THE DIGITAL AND PHYSICAL TOGETHER IN AN OBJECT. THE WARP TRANSFORM IS A PIECE OF 100% DIGITAL VISUAL VERNACULAR APPLIED ON TOP OF A MUNDANE PHYSICAL OBJECT. WAVY BABY IS AN OLD DESIGN PARADIGM RUN THROUGH A NEW ONE.

WAVY BABY IS THE PLATONIC IDEAL OF A SKATE SHOE, WARPED TO SHIT.

SNEAKER COMPANIES ARE IN A CONSTANT CYCLE OF RIFFING ON EACH OTHER, AND USUALLY THE INNOVATIONS IN FORM ARE BORING. STANDARD SHOE INDUSTRY PRACTICE IS: STEAL A SOLE, STEAL AN UPPER, CHANGE A SYMBOL. WHAT A BORING USE OF CULTURAL MATERIAL. WAVY BABY IS A COMPLETE DISTORTION OF AN ENTIRE OBJECT THAT IS ITSELF A SYMBOL.

BABIES ARE THE NEW.
SEGWAYS ARE TECHNOLOGY.
WAVY IS THE NEW TECHNOLOGY.

THIS IS NOT A SKATE SHOE. / CECI N'EST PAS UNE CHAUSSURE DE SKATE¹

50. The last line of the manifesto, “Ceci n’est pas une chaussure de skate,” is a reference to surrealist artist René Magritte, who, in 1929, released *The Treachery of Images*, a painting of an object that looks like an early twentieth century smoking pipe but bore the inscription “Ceci n’est pas une pipe” (i.e., “This is not a pipe”). Just as Magritte’s painting probed the line between two-dimensional representation and the “real world” itself, *Wavy Baby* presents a three-dimensional sculpture in the vague form of a skate shoe rather than a skate shoe itself.

51. We believe that design for skate shoes has run stale. The shoe industry is littered with redundant and uninspiring versions of the classic skate shoe. For instance, the four images below were taken from their respective websites showing (from top left and moving clockwise) the side profile of the Vans Old Skool (released in 1977); the Revenge X Storm (released in 2017); the Converse Cons One Star (originally released in

¹ See *Wavy Baby* Manifesto from the MSCHF website attached as **Exhibit 1**.

1974 but the re-released version shown below was released in 2017); and *Wavy Baby* (to be released in 2022):



52. Although virtually all skate shoes share a similar profile and features, the Vans Old Skool is considered *the* skate shoe. *Wavy Baby* reaches its design by taking the profile of the classic, prototypical, iconic skate shoe—the Old Skool—and warping the design into something that appears more natural as a digitally manipulated image than a physical item. *Wavy Baby* achieves this effect by taking the classic skate shoe, running a digital filter over it, and then manifesting that digital vision in physical form.

53. *Wavy Baby* creates a wobbly or unbalanced aesthetic meant to update the classic shoe for our uncertain, tumultuous, “wavy” times. *Wavy Baby* is meant to express the wobbliness of the current moment, by creating a surreal shoe that challenges consumers to consider their relationships with the digital world and consumer society, including but not limited to their own consumption habits.

54. *Wavy Baby*'s distortion and exaggeration of the classic skate shoe design is also obvious from the bottom of the shoe. Below is a graphic showing (from top left and moving clockwise) the bottom of a Vans Old Skool (released in 1977); the Converse Cons One Star (shown as re-released in 2017); *Wavy Baby* (2022); and the DC Trase (2015). Again, although all these skate shoe soles share similar design features, the Old Skool sole is widely considered the most iconic, even if it is not particularly unique on the current sneaker market.



55. By design, *Wavy Baby* intentionally anchors itself to the Vans Old Skool shoe so that consumers have a familiar object to root their understanding of *Wavy Baby* and because of Vans' outsized role in the sphere of skate shoes—but it warps that anchor point. This anchoring is conceptually key to *Wavy Baby*, consistent with MSCHF's artistic practice of creating cultural readymades and challenges the consumer by forcing the question—*why buy these shoes?* Or—*why buy a less comfortable, less useful shoe that costs more money? Why be a sneakerhead at all?*

***Wavy Baby* as a Cultural Readymade**

56. *Wavy Baby* is a cultural readymade. The Vans Old Skool skate shoe is part of the raw material used to create *Wavy Baby*—it is paint, if you will. More specifically, the idea of the Vans Old Skool is the raw material.

57. Our purpose is to choose the strongest working media, which is to say to choose the most potent cultural symbol we can. We chose a Vans shoe because of its cultural potency. The Vans shoe can be compared to Ai Weiwei's Han Dynasty urn: a functional object that becomes powerful through the weight of history and cultural associations built up around it.

58. Then, we wholly transform the physicality of the shoe into something new and strange. The working process is evident in the final object: as internet commenters have clearly identified, the *Wavy Baby* silhouette is the product of the Photoshop Liquify tool.

59. This context shift—from traditional, literally old-school, shoe—to a form that can only be arrived at through digital manipulation, is akin to Duchamp's transplant of a ceramic urinal bowl from bathroom to gallery.

***Wavy Baby* as a Part of MSCHF's Oeuvre**

60. MSCHF has an established track record of using iconic cultural objects (specifically commercial objects) in its work. A few examples include:

- *Birkinstocks* – the Birkin Bag is used as a symbol for extravagance, consumerism, and sacredness; the Birkenstock is used as a symbol for the quotidian and the functional.

- *Jesus Shoes / Satan Shoes* – Nike and the Catholic Church are both appropriated wholesale and used, by virtue of their combination, to lampoon the absurdity of the brand collaboration paradigm. Furthermore, their juxtaposition analogizes the consumer frenzy of the sneaker industry to the furor of religious devotion.
- *Severed Spots* – MSCHF uses a Damien Hirst Spot Painting wholesale as material to explore fractionalized ownership, art as an investment vehicle, and artistic down-merchandising.

Wavy Baby's Distinctive Design

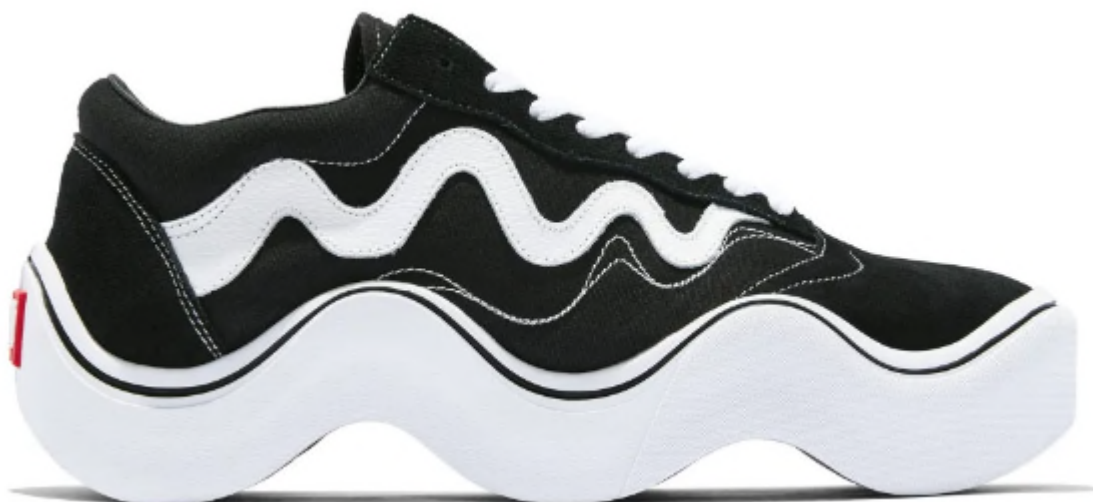
61. While the Vans Old Skool unmistakably served as inspiration for MSCHF, the resulting product was one that includes significant and obvious differences from the Vans Old Skool, including the following:

- The sole of *Wavy Baby* features a prominent wave shape, whereas the Old Skool has a (far more) functional flat sole.



- *Wavy Baby's* sole significantly decreases surface contact with the walking surface. This required us to create a considerably thicker pattern where

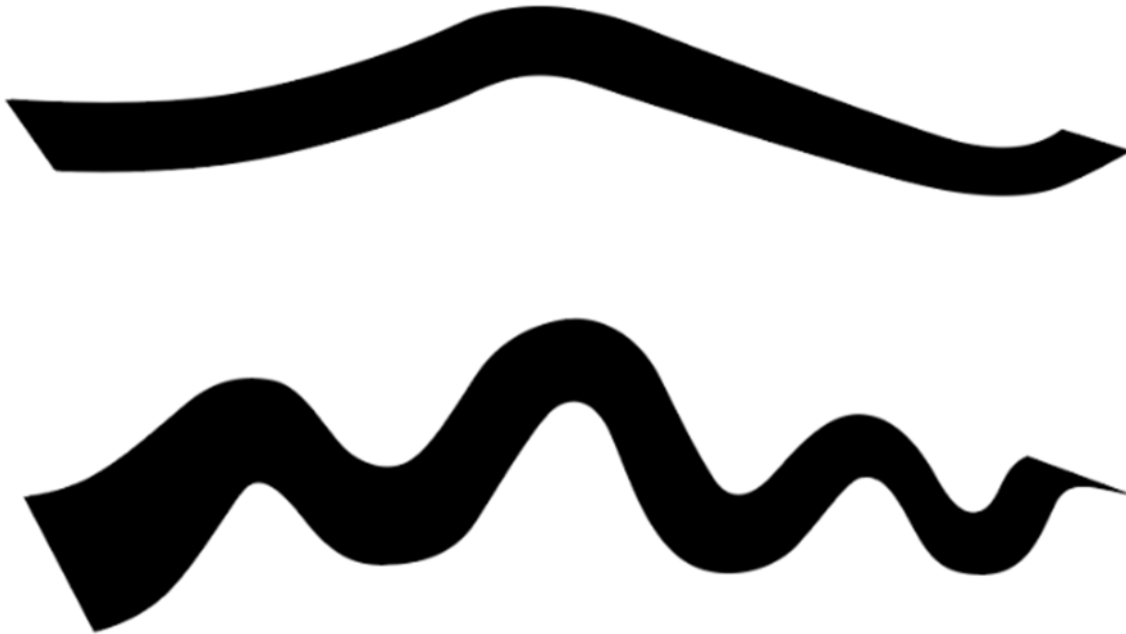
the sole touches the ground to improve walkability. The result is still not very practical to walk in for long distances, let alone to skate in. *Wavy Baby* is absolutely not an everyday shoe.



- The wave in the *Wavy Baby* sole causes the *Wavy Baby* to be significantly taller than the Old Skool, which results in a chunkier, boxier silhouette compared to the Old Skool.



- As you can also see from the above image of the shoes side by side, the tags on the back differ significantly. Vans' is smaller and includes a skateboard with the words "VANS OFF THE WALL"; *Wavy Baby* is larger and includes the word "Wavy" and a whimsical, cartoonish depiction of George W. Bush falling off a Segway.
- The side stripe on the *Wavy Baby* consists of a messy, squiggly line; Vans' stripe is a clean cut, sharper, straighter line. The Vans stripe is nearly equal width all the way through, while the *Wavy Baby* side stripe thickens by more than double from the front of the stripe to the back of the stripe. They look almost nothing alike when compared side-by-side.



- The sidewall on the Vans Old Skool is half as thick as the sidewall on *Wavy Baby*, so the side wall of the *Wavy Baby* constitutes a noticeably larger portion of the shoe than in the Old Skool.



- Notably, the top of the Vans' sidewall creates a three-tiered or grooved appearance. On *Wavy Baby*, the striping is indented, not grooved.
- The tag on the inside of the tongue of each shoe is also very different, and anytime someone checks the size of the shoe, they would be reminded that this is a MSCHF shoe.



- The toe boxes are the part of the shoe that holds the toes when a person wears the shoes. The profile and shape of the toe boxes are very different between the shoes.



- The most prominent feature of the *Wavy Baby* sole is a large red warning label that is obvious to anyone who sees it and that obscures the tread.

The label features an image of a man falling down stairs (the opposite of what should happen if the person were wearing Vans), and it reads:

WARNING EXTREMELY WAVY: BY PLACING YOUR FOOT
IN THIS SHOE, YOU AGREE TO WAIVE ANY CLAIMS
AGAINST MSCHF FOR ANY INJURY, DEATH, OR
DAMAGES ARISING FROM HAVING YOUR FOOT IN THIS
SHOE, BY PLACING YOUR FOOT IN THIS SHOE, YOU
ALSO AGREE TO ASSUME ALL RISKS OF INJURY
RESULTING FROM HAVING YOUR FOOT IN THIS SHOE.

The Old Skool sole has no similar label.

- While the stitching on a Vans Old Skool is crisp, and double stitching is always parallel, the *Wavy Baby* continues the liquified aesthetic by having the stitch lines oscillate and overlap in irregular patterns.





- Unlike the Vans Old Skool, the collar on *Wavy Baby* is puffed and very irregular.
- The shoes have distinctly different shapes when viewed from the top-down. Whereas the Old Skool has a smooth, regular contour, *Wavy Baby*'s contour is irregular and wavy, and it is noticeably wider than the Old Skool at the back edge of the toe box.
- The *Wavy Baby* is significantly and noticeably heavier than the Vans Old Skool as well; a pair of *Wavy Baby* is nearly 3 times the weight of Vans Old Skool.

- Both shoes prominently feature their respective, distinctive brand logos on the inside soles.

Design of the Packaging

62. Both shoes use red boxes as part of their packaging, but each is clearly labeled in several places with their distinctive brand names. The *Wavy Baby* box prominently uses the name “WAVY BABY,” says “MSCHF X TYGA” in large print on the side, and features the cartoonish image of George W. Bush falling off a Segway. The Vans box simply has Vans’ “OFF THE WALL” logo on the top, with an angled, repeated pattern of Vans’ “Flying Vee” logos on the sides.



63. The Vans box features clean light-colored lines on each edge of the box. The *Wavy Baby* box has warped, squiggly lines that are messy and only vaguely trace the edges of the box.

64. The boxes are different shapes. The *Wavy Baby* box is noticeably deeper than the Vans box, which has a long profile compared to the more-square *Wavy Baby* box.

65. Additionally, when a consumer opens the *Wavy Baby* box, they immediately see a sizeable, bright yellow card making clear that the shoes are a product of MSCHF and part of the MSCHF Sneakers project. Vans boxes contain no similar card.

66. The *Wavy Baby* packaging, with its prominent display of “WAVY” and squiggly lines, enhances MSCHF’s message by emphasizing the liquefied nature of the art work inside the box, the *Wavy Baby*.

Price and Availability

67. *Wavy Baby* will be sold for the high price of \$220, which is considerably more expensive than the \$60–65 that Vans typically charges for Old Skools. The high price point reflects the premium customers are paying for a work of art.

68. *Wavy Baby* will be offered in a limited release with only four thousand pairs available for purchase on a single day, unlike Vans’ Old Skools which are mass-produced and readily available for purchase at any time.

69. *Wavy Baby* will be offered exclusively through MSCHF’s <www.mschfsneakers.com> website and MSCHF’s Sneakers mobile application, unlike Vans Old Skools, which are available for purchase at Vans, Walmart, Dick’s Sporting Goods, Zappos, Journeys, Foot Locker, Amazon, Nordstrom, and dozens of other retailers.

Collaboration with Tyga

70. For the *Wavy Baby* project, MSCHF collaborated with Tyga, a rapper and sneakerhead.

71. Tyga wears *Wavy Baby* in his music video “Freaky Deaky,” featuring Grammy-winning musical artist Amala Ratna Zandile Dlamini p/k/a Doja Cat.²

72. In the video, Tyga is depicted wearing *Wavy Baby* works in Doja Cat’s dream. In fact, everything about the music video is meant to be a surreal, dream-like alternative reality. For example, Tyga is seen falling from a pink and purple sky while wearing *Wavy Baby* works.³



73. Although it is not revealed until the video’s end that Doja Cat dreamed the entire encounter with Tyga, *Wavy Baby* appears in the video’s opening scenes as a first hint (along with a CGI magic mirror) to suggest that the viewer has been transported to a wobbly dream world. Tyga then falls through a trap door into a puffy purple and pink

² Tyga, Tyga, Doja Cat - Freaky Deaky (Official Video), YouTube (Feb. 24, 2022), <https://www.youtube.com/watch?v=5ZHXynGVlcg>. A true and correct copy is attached hereto as **Exhibit 2**.

³ See **Exhibit 2** at 01:19.

sky, when, again, *Wavy Baby* appears on his feet. As seen below from the final image in the video compared to the behind-the-scenes shot, the *Wavy Baby* is the physical object that blends into the CGI-laden dream.⁴

74. The final use of *Wavy Baby* in the “Freaky Deaky” music video again highlights the intersection between a virtual world and reality, when Tyga and Doja Cat both appear as dolls in toy boxes. Tyga makes robotic motions, appearing to come to life in the box, and then punches through the plastic packaging of his toy box, shattering the barrier between a virtual world and reality, and walks to Doja Cat in the *Wavy Baby* shoes. This display emphasizes MSCHF’s message that the *Wavy Baby* “is a reversal



to our societal impulse to transform every element of our physical world into a digital manifestation.”⁵ In the music video, the *Wavy Baby* is a hypothetical concept and part of a dream, but MSCHF has manifested that concept and dream into a tangible object. It “smashes the digital and the physical together in an object.”⁶

⁴ **Exhibit 2.**

⁵ **Exhibit 1.**

⁶ **Exhibit 1.**

The Public Is Not – And Will Not Be Confused – Regarding *Wavy Baby*

75. Even if *Wavy Baby* is occasionally worn in public, reasonable consumers could never mistake them for Vans.

76. MSCHF anticipates that many, if not the majority, of the purchasers of *Wavy Baby* (like the purchasers of our previous sneaker-related artworks, including the *Jesus Shoes* and *Satan Shoes*) will be sneaker, streetwear, and art collectors, who commonly keep their collections in boxes or displayed on shelves.

77. *Wavy Baby* artworks could not safely or comfortably be worn for skating. Instead, celebrities wear them on the red carpet to make a showy entrance, or they wear them in front of the paparazzi's cameras, much in the same way that they would wear a giant diamond brooch or a meat dress. Items like *Wavy Baby* artworks are meant to make a public statement, to be thought-provoking and to allow the wearer to comment on relevant issues simply by wearing an article of clothing, a piece of jewelry, or footwear.

78. For the photo shoots with a skater, we used a professional skate boarder in a controlled environment. The man probably could have done the tricks in high heels.

79. Given the unique design, the *Wavy Baby* has received significant public attention. The public response makes clear there will be no confusion.

80. For example, many of the posts show an understanding that this is not typical, functional wearable footwear, as they have highlighted the warning label. Instagram user @byjaadiee (who boasts over 70,000 followers) posted an Instagram Reel of *Wavy Baby*, specifically showing the warning label. @byjaadiee, "Anzeige| WHAT



ARE THOSEEE 🤔🤔🤔 [@mschf](#) x [@tyga](#) [#unboxing](#) [#wavybaby](#)
[@mschfsneakers](#).”⁷

81. Many have also noted the *Wavy Baby*’s unique take on a classic skate shoe. For example, HIGHXTAR, an online magazine devoted to contemporary urban life, wrote that “Tyga and MSCHF team[ed] up to reinvent the iconic skate silhouette.”⁸ Hypebeast, a leading online destination for contemporary fashion and streetwear, emphasized how the *Wavy Baby* is “a new twist on the classic skate shoe” and “decked in trippy design details that make the eye wander.”⁹ *Clout News*, a news and entertainment outlet, wrote that the *Wavy Baby* is “the remixed version of a classic silhouette.”¹⁰ These articles, and many others, make no reference to the Vans’ Old Skool.

82. Others have described the *Wavy Baby* as distinct from a Vans’ shoe, such as *Footwear News*, a shoe magazine, who noted that the *Wavy Baby* “appears to be loosely based on the classic Vans Old Skool” but has notable differences including “a wave-like aesthetic,” “a wavy striped overlay panel,” “Wavy” branding, and a warning label.¹¹ *Input Magazine* remarked that Tyga and MSCHF are “coloring outside the lines

⁷ Instagram, Apr. 10, 2022, <https://www.instagram.com/reel/CcLRPpPqezJ/>. A true and correct copy is attached hereto as **Exhibit 3**.

⁸ Paoloma Molinos, *This is the Wavy Baby by Tyga x MSCHF*, HIGHXTAR (Apr. 11, 2022), <https://highxtar.com/this-is-the-wavy-baby-by-tyga-x-mschf/?lang=en>.

⁹ *Tyga and MSCHF Release “Wavy Baby” Sneaker*, HYPEBEAST (Apr. 9, 2022), <https://hypebeast.com/2022/4/tyga-mschf-wavy-baby-sneaker-release-info>.

¹⁰ *Tyga and MSCHF Release “Wavy Baby” Sneaker*, CLOUT NEWS, <https://cloutnews.com/web-stories/checkout-tyga-and-mschf-release-wavy-baby-sneaker/> (last visited Apr. 17, 2022).

¹¹ Victor Deng, *Tyga’s MSCHF ‘Wavy Baby Collab is Releasing Soon*, FOOTWEAR NEWS (Apr. 7, 2022), <https://footwearnews.com/2022/focus/collaborations/tyga-mschf-wavy-baby-collab-release-info-1203271419/>.

with a nonlinear take on a classic Vans skate shoe.”¹² Another outlet, *Drip Drops*, commented that “[t]he [W]avy [B]aby’s design is based on the Vans Old Skool, but the redesign makes you feel like you’re on drugs,” and described the art as “a redesigned Vans Old Skool, distorted into a completely new look.”¹³ These articles, and others, expressly distinguish between the *Wavy Baby* and the Old Skool, and affirm a lack of confusion between the two.

83. We are also pleased that many have noted the artistic expression of the shoes. The web magazine *SneakerFreaker* described the *Wavy Baby* as “a wildly-warped take on a skate classic” that makes for a “Dali-esque style,” in reference to the famous surrealist artist Salvador Dali.¹⁴

84. *Highsnobiety* wrote: “‘Wavy Baby’ is the antithesis of contemporary signature sneakers . . . [it’s] unlike any shoe that’s ever come before it,” in a recent article. The article continues, “[i]t looks like a very familiar pair of skate sneakers – complete with midsole stripe, red heel tab and waffle outsole – that’s been run through a Photoshop filter like Liquify, except it’s real and very, very difficult to manufacture.”¹⁵

¹² *MSCHF and Tyga’s ‘Wavy Baby’ Sneakers Seriously Distort Classic Vans*, *Input* (Apr. 11, 2022 10:59am), <https://www.inputmag.com/style/mschf-tyga-wavy-baby-sneaker-vans-release-date-price>.

¹³ *FIRST LOOK: The MSCHF Wavy Baby*, *DRIP DROPS* (Apr. 12, 2022), <https://www.dripdrops.eu/blogs/drip-drops-blog/first-look-the-mschf-wavy-baby>.

¹⁴ Ross Dwyer, *Tyga and MSCHF’s ‘Wavy Baby’ Sneaker Is Wildly Warped!*, *SNEAKER FREAKER*, Apr. 6, 2022, at 1, <https://www.sneakerfreaker.com/releases/tyga-mschf-wavy-baby-sneaker-release-date>. A true and correct copy of the article is attached hereto as **Exhibit 4**.

¹⁵ Jake Silbert, *MSCHF & Tyga’s Insane Skate Shoes Look Like Liquified Vans*, *HIGH SNOBIETY*, Apr. 6, 2022, at 3, <https://www.highsnobiety.com/p/mschf-wavy-shoe-sneaker-tyga-collab-vans/>. A true and correct copy of the article is attached hereto as **Exhibit 5**.

85. In another article, *Highsnobiety* wrote: “The *Wavy Baby*, with its uniquely warped sole, is unlike any sneaker anyone’s ever seen before,” and is “is a wholly original design.”¹⁶

86. The general public also appreciates that *Wavy Baby* creates a surreal and dream-like take on an ideal skate shoe. TikTok creator @thedripdon, who has over 348,000 followers on the app, posted a video where, after noting the warning label, he tries standing in the shoe, at which point he uses a digital effect called “Wacky Mirror” to communicate the wobbliness of the shoes and absurdity of wearing them.

@thedripdon, “Mschf wavy baby x @tyga #sneakers #fyp.”¹⁷

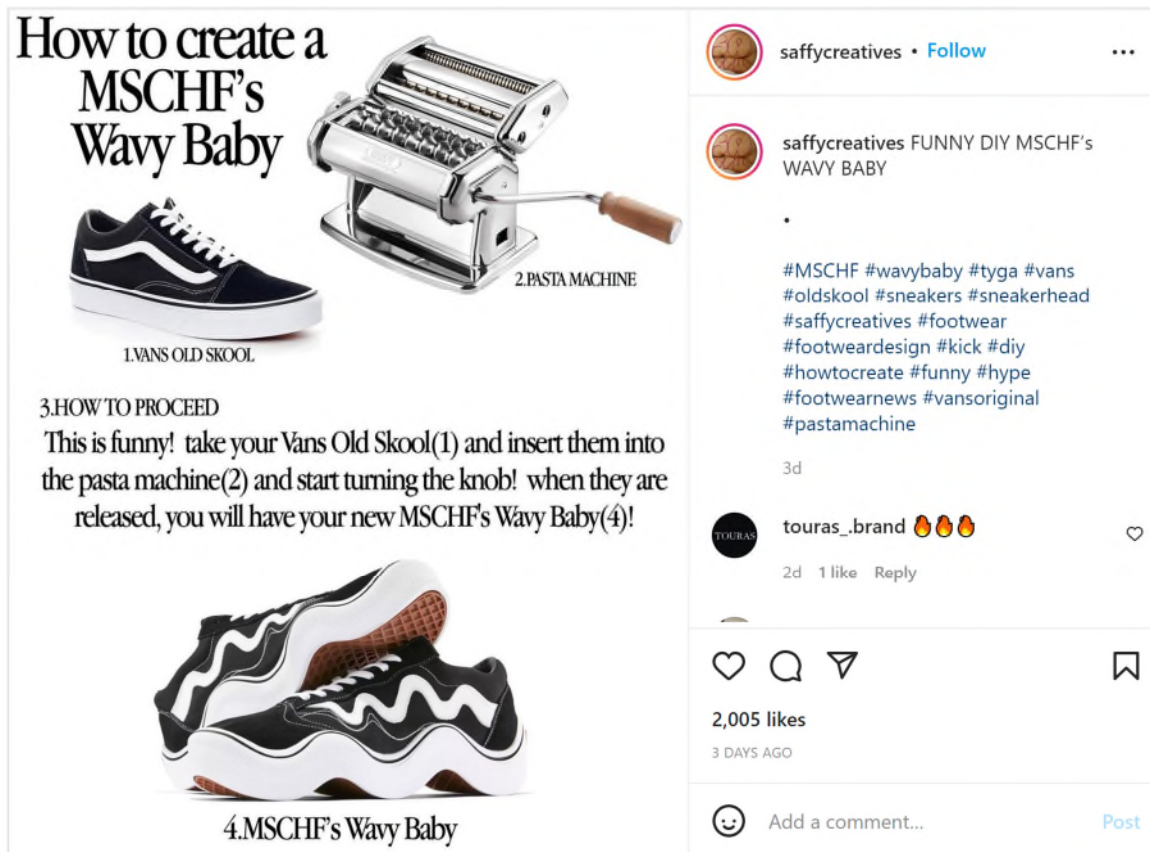


¹⁶ Jake Silbert, *Vans Sues MSCHF Over “Wavy Baby” Skate Shoes*, HIGH SNOBIETY, Apr. 16, 2022, <https://www.highsnobiety.com/p/vans-mschf-lawsuit-wavy-tyga-shoes-sneakers/>. A true and correct copy of the article is attached hereto as **Exhibit 6**.

¹⁷ TikTok, Apr. 6, 2022, <https://www.tiktok.com/@thedripdon/video/7083266557580676394> (last visited Apr. 16, 2022). A true and correct copy is attached hereto as **Exhibit 7**.

¹⁸ See **Exhibit 7** at 00:23.

87. The general public has poked fun at the lack of a “fast fashion” option for *Wavy Baby*. For example, popular Instagram meme account @saffycreatives created a meme suggesting you could make your own *Wavy Baby* by taking a pair of Vans Old Skool shoes and running them through a pasta maker. @saffycreatives, “FUNNY DIY MSCHF’s WAVY BABY.”¹⁹

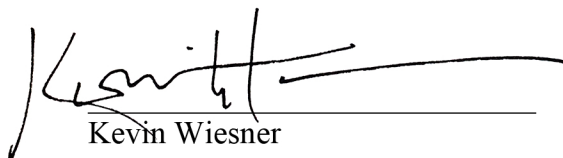


88. Appearing to take literally the tongue-in-cheek directive in our *Wavy Baby* manifesto to “get liquid, with our assets, our diets, and our shoes,” and in an allusion to Salvador Dali’s *The Persistence of Memory*, *Highsnobiety* posted a video to its TikTok

¹⁹ Instagram, Apr. 7, 2022, <https://www.instagram.com/p/CcDQNO6qVzk/>. A true and correct copy is attached hereto as **Exhibit 8**.

page “melting” a pair of the Vans Old Skool shoes in a microwave in order to create their own version of *Wavy Baby*.²⁰

I declare under penalty of perjury that the foregoing is true and correct. Executed on April 17, 2022 in Brooklyn, New York.



Kevin Wiesner

²⁰ TikTok, https://www.tiktok.com/@highsnobiety/video/7084360049598172462?is_copy_url=1&is_from_webapp=v1&lang=en. A true and correct copy is attached hereto as **Exhibit 9**.